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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,521	11/01/2001	Timothy Samuel Girton	760-35 CIP	6660

7590 06/01/2005

Daniel A. Scola, Jr.
HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791

EXAMINER

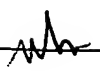
MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 10/002,521	Applicant(s) GIRTON ET AL. 	
	Examiner Cheryl Miller	Art Unit 3738	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): the 102 rejection of 24 over Pinchuck (US 4,657,544).
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____
 Claim(s) objected to: _____
 Claim(s) rejected: 1-3 and 21-24.
 Claim(s) withdrawn from consideration: 4 and 11-16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

The applicant has requested for reconsideration of the finality of the rejection. Applicant's arguments were found non-persuasive by the examiner, and the finality is believed to be proper. Claim 24 (as claimed in the non-final and final office action) remained the same, however it is noted that the claim was unclear whether it was claiming an intermediate product or end product, even though the applicant stated they were trying to claim an intermediate product. This is because the applicant claimed an "implantable" PTFE extrudate, implying it was to be implanted, therefore, implying it was to be used as an end product, however also claimed a polymeric component extractable from the PTFE, implying the polymeric component was present, therefore, implying use as an intermediate product. As best as the claim could be understood by the examiner, the claim was rejected by Zilla. The Zilla rejection remained the exact same in the non-final and the final office action. Zilla discloses an implant which would read on both the intermediate and the end product of the applicants invention, either way someone would interpret it (because Zilla properly rejection showing all structural features claimed, or obvious to have them). The main point here, is that the Zilla rejection over claim 24 stayed the same throughout the two office actions, and both actions even point to col.4, lines 55-67 and col.6, lines 61-63, wherein Zilla discloses use of an extractable polymer component (evidence that a polymer component is present or may be present, therefore showing possible use as an intermediate product). It would be improper to withdrawal the finality of the rejection just because the applicant did not understand or see a portion of the office action, it is also improper for the applicant to rely on or argue what they think the examiner is thinking, instead of what is actually recited in the rejection. In summary, the rejection remained the same and contained all structural features required by the claim and acknowledged all features of the claim, and it is irrelevant which way someone would interpret it.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 4-05)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050516

Continuation of 3. NOTE: Claim 24 was proposed to be amended, changing comprising to "consisting essentially of" and also deletion of "implantable" which changes the scope of the claim and requires further consideration. Also, claims 25-26 were proposed to be added without canceling a corresponding number of claims.



BRUCE SNOW
PRIMARY EXAMINER